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Attorneys for Fifth Third Mortgage Company

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

SCHULTE PROPERTIES LLC,

Debtor.

Case No. 18-12734-mkn

Chapter 11

**AMENDED NOTICE OF HEARING ON
FIFTH THIRD MORTGAGE
COMPANY'S MOTION FOR
PROTECTIVE ORDER OR, IN THE
ALTERNATIVE, MOTION FOR
MODIFICAION OF SUBPOENA [FED.
R. CIV. PROC. 26(c); FED R. BANKR.
PROC. 7026; LBR 7037]**

Hearing:

Date: July 28, 2021

Time: 9:30am

Judge: Honorable Mike K. Nakagawa

Courtroom:2

Pursuant to Federal Rule of Civil Procedure 26(c), adopted by Bankruptcy Rule of Civil Procedure 7026, *Creditor* Fifth Third Mortgage Company ("Fifth Third") hereby provides this *Amended Notice of Hearing* on the Motion for Protective Order pursuant to Fed. R. Civ. P. 26(c) and Memorandum of Points and Authorities in support thereof filed on June 11, 2021 at Docket No. 863.

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

The above captioned hearing on the Motion is scheduled for July 28, 2021 at 9:30am before the Honorable Mike K. Nakagawa at the U.S. Bankruptcy Court for the District of Nevada – Las Vegas Division.

PLEASE TAKE NOTICE that Creditor Fifth Third Mortgage Company (“Fifth Third”) hereby moves this Court pursuant to Federal Rules of Civil Procedure, Rule 26(b)(2)(C)(i) and 26(c) adopted by Bankruptcy Rule of Civil Procedure 7026, for a protective order against the Debtor, Schulte Properties, LLC’s (“Debtor”) *Subpoena Duces Tecum* (“Subpoena”), which seeks production of documents from Fifth Third.

The Motion is made on the grounds that documents Debtor requests were either: (i) already produced by Fifth Third; (ii) equally available to Debtor; or (iii) objectionable as outlined in Fifth Third’s Responses to the original production requests. To the extent Debtor was dissatisfied with Fifth Third’s Responses to the production requests, Debtor failed to meet and confer regarding the Responses, file a motion to compel seeking additional production, or request a ruling on Fifth Third’s objections to the discovery requests. In the meantime, the discovery period expired. Debtor now seeks the same documents from Fifth Third. Debtor’s continued pursuit of said documents is inappropriate, burdensome, and an abuse of the judicial process.

Based on the foregoing, Fifth Third requests the Court issue a protective order preventing Debtor from continuing its pursuit of: (1) documents already produced by Fifth Third; (2) documents already in the Debtor’s possession, or equally available to the Debtor; (3) irrelevant documents that are not the subject of a current contested matter between the Parties; (4) privileged, proprietary, or confidential documents of Fifth Third, which are irrelevant to a contested matter; (5) and any other discovery not based on Fifth Third’s pending Plan Objection.

Fifth Third attempted to circumvent the need to file the present Motion by sending a meet and confer letter to Debtor’s counsel. Fifth Third’s advised Debtor it intended to file the instant Motion for Protective Order absent the withdrawal of the Subpoena. To date, Debtor has yet to withdraw the Subpoena. Based upon the foregoing, Fifth Third had no choice but to seek protection from the Court.

1 This Motion is based on this Notice of Motion and Motion, the Declaration of Eddie R.
2 Jimenez, the accompanying Memorandum of Points and Authorities, and the pleadings and papers
3 on file in this action.

4 **PLEASE ALSO TAKE NOTICE** that the above captioned hearing on the Motion is
5 scheduled for July 28, 2021 at 9:30am before the Honorable Mike K. Nakagawa at the U.S.
6 Bankruptcy Court for the District of Nevada – Las Vegas Division.

7 **PLEASE ALSO TAKE NOTICE** that unless the Court orders otherwise, any party
8 opposing this Motion must file and serve any objections or oppositions no later than fourteen (14)
9 days preceding the hearing date for the Motion in accordance with LR 9014(d). The opposition
10 must set forth all relevant facts and any relevant legal authority. An opposition must be supported
11 by affidavits or declarations that conform to the provisions of LR 9014(c).

12
13 If you object to the relief requested, you *must* file a **WRITTEN** response to this
14 pleading with the court. You *must* also serve your written response on the person who
15 sent you this notice.

16 If you do not file a written response with the court, or if you do not serve your written
17 response on the person who sent you this notice, then:

- 18 • The court may *refuse to allow you to speak* at the scheduled hearing; and
- 19 • The court may *rule against you* without formally calling the matter at the hearing.

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21 **ALDRIDGE PITE, LLP**

22 Dated: July 1, 2021

/s/ Eddie R. Jimenez

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DISTRICT OF NEVADA

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Bankruptcy Case No. 18-12734-mkn
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CERTIFICATE OF SERVICE

I, Lauren Timby declare that:

I am employed by Aldridge Pite, LLP. My business address is: 4375 Jutland Drive, Suite 200; P.O. Box 17933, San Diego, CA 92177-0933. I am over the age of eighteen years and not a party to this cause.

On July 1, 2021, I caused the AMENDED NOTICE OF HEARING FIFTH THIRD MORTGAGE COMPANY'S MOTION FOR PROTECTIVE ORDER OR, IN THE ALTERNATIVE, MOTION FOR MODIFICATION OF SUBPOENA [FED. R. CIV. PROC. 26(c); FED R. BANKR. PROC. 7026; LBR 7037] to be served on the parties listed herein via electronic means through the Court's CM/ECF system or by placing a copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail, addressed as follows:

/././

1 /././

2 Schulte Properties LLC
3 9811 W. Charleston Blvd Ste 2-351
4 Las Vegas, NV 89117

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5 U.S. Trustee
6 Department of Justice
7 300 Las Vegas Boulevard, SO.
8 Suite 4300 Las Vegas, NV 89101
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14 /s/ Lauren Timby